IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.71819-M of 2006

Date of Decision: March 22, 2007

Santokh Singh

...Petitioner

VERSUS

Municipal Council, Goniana Mandi

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.S.S.Bhinder, Advocate,
for the petitioner.

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RANJIT SINGH, J.

This order will dispose of three Criminal Misc.Petitions No.71819-M of 2006 (Santokh Singh Vs. Municipal Council, Goniana Mandi), 71822-M of 2006 (Manjit Singh Vs. Municipal Council, Goniana Mandi) and 71823-M of 2006 (Kuldeep Singh Vs. Municipal Council, Goniana Mandi), as these have been disposed of by a common order. The facts are being taken from Crl.Misc.No.71819-M of 2006.

The petitioner is aggrieved against the order passed by Sub-

Divisional Magistrate, Bathinda in exercise of powers under Section 133 Cr.P.C. directing him to shift his poultry farm out of limits of Municipal Council, Goniana Mandi within a period of one month.

The facts, in brief, would show that the petitioner is running a poultry farm within the municipal limits of Municipal Council, Goniana Mandi from the last thirty years. The case set up in the petition is that the poultry farm was established on being duly approved by the respondent-Municipal Council and is in operation for the last so many years. In the year 2002-03, the respondent-Municipal Council moved an application under Section 133 Cr.P.C. before the Sub-Divisional Magistrate, Bathinda for initiating proceedings for directing the petitioner either to close down the poultry farm or shift the same to some other place as the poultry farm was creating hardship for the neighbours. Besides there is a fear of epidemics. The Sub-Divisional Magistrate, acting on the complaint, had directed the petitioner to shift the poultry farm within a period of six months. This order was challenged by the petitioner by way of a revision before the court of Addl.Sessions Judge, Bathinda, who, vide his order dated 18.11.2003, accepted the revision and set-aside the order of the Sub-Divisional Magistrate on the ground that no conditional order was issued and no evidence was taken in this case. Thereafter the Sub-Divisional Magistrate passed a conditional order on 14.12.2005 and confirmed the said conditional order on 3.4.2006 by holding that poultry farm was spreading pollution, foul smell and that there was apprehension of epidemics. It was further noticed that the scattered feathers of animals were causing nuisance and there was threat of spreading of animals disease. Directions to close down

the poultry farm accordingly were given. This order was taken in revision before the court of Sessions Judge, who has dismissed the same, which is now impugned in the present petition.

The counsel for the petitioner mainly submits that the poultry farm is running and is in existence since long and that the petitioner is earning his livelihood from the same. Any order directing closure of the poultry farm would lead to depriving the petitioner of his livelihood and as such would be violative of Article 21 of the Constitution of India. The counsel would also plead that there is no immediate threat of epidemic or a nuisance and as such the impugned order directing closure of the poultry farm from the existing site would lead to miscarriage of justice. The counsel also contends that the petitioner is having his residence in the vicinity of the poultry farm and as such can say that there is no nuisance being caused by the poultry farm. He also points out that complaint was earlier filed by the Municipal Council under Section 167 read with Section 219 of the Punjab Municipal Act and it was dismissed and hence the present proceedings under Section 133 Cr.P.C. can not be maintained.

While considering the submissions of the petitioner in regard to the rejection of earlier complaint filed under Section 167 read with Section 219 of the Punjab Municipal Act, it is rightly observed that the said application related to slaughter of chickens in the abadi area, which was alleged to be an offence. The said application, as noticed by the revisional court, was dismissed on the technical ground that the chickens or hens do not fall under the category of “animals” mentioned in Section 168(3) of the Punjab

Municipal Act. The present application is moved under the provisions of Section 133 Cr.P.C. and as such it is required to be seen if the poultry farm existing in the municipal area would go to cause any nuisance or not. It is not a case of private nuisance that any objection could be raised for invoking the jurisdiction of the Sub-Divisional Magistrate under Section 133 Cr.P.C. It is noticed that the nuisance found in this case was hazardous to the health of public or community at large and as such this application under Section 133 Cr.P.C. is rightly held maintainable. It is also noticed by the Addl.Sessions Judge that the evidence regarding emission of foul smell due to running of poultry farm was available on record. It is made out from the evidence on record that running of the poultry farms was spreading pollution due to bad odour and it may result in spreading of disease, which is hazardous to the health of inhabitants of the locality. Evidence of Sukhdev Singh, Junior Engineer can be noticed in this regard. Even if these poultry farms were being run on being duly approved by the Municipal Council, the same could not be permitted to run in view of the nuisance that it is causing due to change of habitation in the area, which obviously has come to be occupied by the residents. Notice is also taken of Exh.A-8, which is a report of Environment Engineer, Regional Office, Bathinda of Punjab Pollution Control Board, which reveals that due to running of poultry farms in wards No.4 and 5 life of inhabitants of 400 houses had become hell. Request was made by the residents to the Executive Officer for getting the said poultry farm shifted from the abadi area. Even if there be some technical objection to exhibiting of some letters on record, the same would pale into insignificance

having regard to the effect that the poultry farm would be having to the health and other connected issues for the inhabitants of the area. The submissions of the counsel for the petitioner relating to the right of livelihood are noticed to be rejected. It was held in ***State of Maharashtra Vs. Basantibai, AIR 1986 SC 1466*** that Art 21 essentially deals with personal liberty and that it has little to do with the right to own property as such. The petitioner is being asked to shift and it would not lead to any deprivation of the right of livelihood. He is being asked to do so to improve the living conditions of large number of people. The individual right of the petitioner in this regard has to make way for a larger interest of the society/community. No one can be allowed to carry on a business, which is hazardous to the community at large. It can be noticed that the entire country had faced a threat of bird flu in a very recent past and as such the measures taken by the Municipal Council to take or rectify spread of such dreaded disease cannot be faulted. Rather it needs to be encouraged. The Sub-Divisional Magistrate has also not fore-closed the right of the petitioner to run poultry farm. Directions are issued to close the poultry farm from the place of its existence and the petitioner is left with an option either to close down or shift the same to some other place outside the habitation.

No infirmity, as such, is noticed in the impugned order, which is otherwise just, reasonable and equitable. The present petition is accordingly dismissed.

March 22, 2007 (RANJIT SINGH)
ramesh JUDGE